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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,525	02/25/2004	Allan R. Jones JR.	1-25083	2726
4859	7590	10/19/2005		
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			EXAMINER LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,525

Applicant(s)

JONES ET AL.

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07/25/2005 (AMENDMENT).  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 13-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genger et al (EP 0 958 841 A2) in view of Gradon et al. ('834) and Brostrom et al. ('473).

The difference between Genger et al. and claim 13 is a lower strap that extends continuously around a user's head.

Gradon et al. teach a lower strap (120,108) that extends continuously around a user's head (fig.4). Gradon et al. employ this configuration for the purpose of enabling a user to turn his head while wearing the mask and maintain a seal between the mask and the face of the wearer (figs.1 and 2).

It would have been obvious to modify the lower strap of Genger et al. to extend continuously around a user's head in a recess in a lower portion of the mask because it would have provided a means for maintaining a seal between the wearer's face and the mask while the user turns his head as taught by Gradon et al..

To the extent, if any, that the lower strap of Gradon et al. may not be construed as extending continuously around a wearer's head, resort is had to Brostrom et al. which teach a lower strap (fig.7 and col.6, lines 17-35) that is a single strap that extends

continuously around a wearer's head for the purpose of providing an additional connection to a wearer thereby providing a more secure fit and for providing an additional connection that enable a wearer to remove the mask from the face but continue to hang the mask about the neck in a convenient position.

Claim 14 is substantially equivalent in scope to claim 13 and is included in Genger et al. as modified by Gradon et al. and Brostrom et al. for the reasons set forth above with respect to claim 13.

As to claims 15,17,20, while Genger et al. may not expressly disclose the sequence of connection between brow bar and upper portion of the mask, it is submitted that since brow bar (48) includes slots through which elastic head strap (42) passes, it would have been obvious to manually manipulate the upper portion (34) of the mask through the elastic strap that passes through the brow bar after the strap and brow bar are donned OR manually manipulate the upper portion (34) of the mask and insert it between the elastic upper strap (42) and brow bar prior to donning both the upper head strap and mask as equivalent methods of securing the mask to a wearer's head because either method of securing the nasal mask to a wearer's head will work as well as the other. Further, applicant has not established any criticality to donning the mask by any particular sequence or procedure.

As to claims 16 and 18, Genger et al. (figs.1-3) disclose said lower portion of said nasal mask is releasably attached to the user's head by positioning said lower strap in a recess (see recess beneath head of hook #32 in figs. 1-3 of Genger et al.) in said mask adjacent a lower portion of said mask.

As to claim 19, Genger et al. as modified by Gradon et al. and Brostrom et al. as discussed above with respect to claim 13, also disclose a resilient straps (see col.5, lines 53-55 of Brostrom et al.).

As to claim 21, Genger et al. as modified by Gradon et al. and Brostrom et al. teach the lower portion of the nasal mask to have a recess (126,128,202 of Gradon et al.) which is located between the user's nose and mouth when the mask is positioned to extend over the user's nose (see fig.4 of Gradon et al.), and wherein the resilient lower strap (120 of Gradon et al.) is positioned in the recess.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 13-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant masks and relevant methods of securing the masks to a wearer.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis

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October 15, 2005